



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

8th Floor, World Trade Centre, Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 373/223 /B/14-RA | 1244

Date of Issue 05-03-2018

ORDER NO. 80/2018-CUS (SZ) / ASRA / MUMBAI/ DATED 28.02.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 129DD OF THE CUSTOMS ACT, 1962.

Applicant : Shri Shivayogarajan Nishanthan

Respondent : Commissioner of Customs, Chennai.

Subject : Revision Application filed, under Section 129DD of the Customs Act, 1962 against the Order-in-Appeal No. C. Cus. No. 718/2014 dated 30.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.



ORDER

This revision application has been filed by Shri. Shivayogarajan Nishanthan (herein referred to as Applicant) against the order no C. Cus. 718/2014 dated 30.04.2014 passed by the Commissioner of Customs (Appeals), Chennai.

2. Briefly stated the facts of the case is that the applicant, a Sri Lankan national, arrived at the Chennai Airport on 30.08.2012. On arrival the Applicant was intercepted while attempting to exit the Green Channel without baggage declarations at the Red Channel. Examination of his baggage resulted in the recovery of a gold chain weighing 220 gms valued at Rs. 6,86,180/-. The Applicant was arrested and was remanded to judicial custody and subsequently released on bail. After due process of the law the Assistant Commissioner of Customs, Airport vide Order-In-Original No. 713/2013 dated 17.10.2013 ordered absolute confiscation of the impugned goods under Section 111 (d), (l), (m) and (o) of the Customs Act read with Section 3 (3) of Foreign Trade (Development & Regulation) Act and imposed penalty of Rs. 68,000/- under Section 112 (a) of the Customs Act, 1962.

3. Aggrieved by the said order, the applicant filed appeal before the Commissioner (Appeals), who vide an interim order directed the Applicant to pre deposit Rs. 34,000/-. As the same was not paid, the Commissioner (Appeals) vide Order-In-Appeal No. C. Cus No. 718/2014 dated 30.04.2014 rejected the appeal of the applicant under section 129E of the Customs Act, 1962.

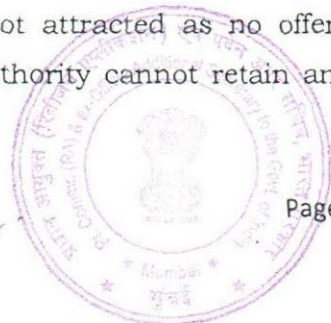
4. The applicant has filed this Revision Application interalia on the following grounds that:

4.1. The order of the Commissioner (Appeals) is against law, weight of evidence and circumstances and probabilities of the case.

4.2 He has retracted his statements before the learned ACMM and claims ownership of the gold.

4.3 The Original Adjudicating Authority has stated that the Applicant is not an eligible passenger, however being a foreign national the question of eligibility does not arise.

4.4 The sections 111 (d), (l), (m) and (o) are not attracted as no offence is constituted. And hence the Original Adjudicating Authority cannot retain and the order is liable to be set aside on this score alone.



4.5 He had worn the gold chain and the same was visible therefore the question of declaration does not arise. Being a foreigner he was not aware of Indian law and arrest or prosecution was not warranted for non-declaration.

4.6 He did not pass through the green channel. He was intercepted in the hand baggage area and he was all along at the red channel under the control of the Customs Officers. That he attempted to smuggle the gold and evade duty is not correct.

4.5 As per section 132 of the Customs Act, 1962 a false declaration is punishable, however the above section will not apply to non declaration. Even assuming without admitting he had not declared the gold before the officers it is a technical fault and is pardonable. Secondly, CBEC Circular 09/2001 gives specific directions to the Customs officer that the declaration should not be blank, if not filled in by the passenger the officer will help them to fill the declaration card. The only allegation against him is that he did not declare the gold.

4.6 The respondent did not consider his request to take back the gold jewelry for re-export.

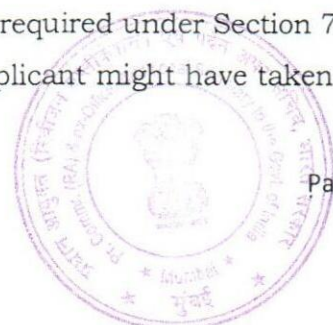
4.7 The absolute confiscation of the gold was unreasonable and the personal penalty imposed was very high.

The Revision Applicant also cited various assorted judgments in support of his case, and prayed for permission to re-export the gold jewelry on payment of nominal redemption fine and reduce the personal penalty.

5. A personal hearing in the case was held on 04.12.2017, the Advocate for the respondent Shri Palanikumar requested for an adjournment due to a medical emergency. The personal hearing was rescheduled on 29.01.2018, which was attended by the Shri Palanikumar, the Advocate, re-iterated the submissions filed in Revision Application and cited the decisions of GOI/Tribunals where option for re-export of gold was allowed. Nobody from the department attended the personal hearing.

6. The Government has gone through the case records. The Applicant is a foreign national, however every tourist has to comply with the laws prevailing in the country visited. If a tourist is caught circumventing the law, he must face the consequences. It is a fact that the gold was not declared by the passenger as required under Section 77 of the Customs Act, 1962 and if he was not intercepted, the Applicant might have taken out the

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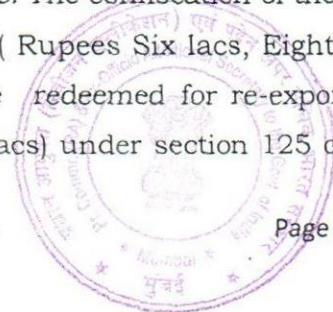
gold jewelry without payment of customs duty. Hence the confiscation of the gold is justified.

7. However, Applicants ownership of the gold jewelry is not disputed. The gold was not in primary form. The facts of the case also state that the Applicant had not cleared the Green Channel exit and was intercepted before the exit. The impugned gold chain was worn by the Applicant and the same was not ingeniously concealed. With regards to the declaration, the CBEC Circular 09/2001 gives specific directions to the Customs officer as follows, *"It may be ensured that every passenger reporting at Red Channel fill up a Disembarkation Card clearly mentioning therein the quantity and value of goods that he has brought, and hand over the Customs portion of the card to the officer on duty at the red Channel. In case the same is incomplete/not filled up, the proper Customs officer should help record the O.D of the passenger on the Disembarkation Card and only thereafter should countersign/stamp the same, after taking the passenger's signature."* Thus, mere non-submission of the declaration cannot be held against the Applicant, more so because the Applicant is a foreigner. Considering all factors, the Government is of the opinion that the absolute confiscation of the impugned gold is not justified.

8. As the Applicant has pleaded for re-export of the confiscated gold, Government is inclined to accept the plea. In view of the above mentioned observations, the Government also finds that a lenient view can be taken while imposing redemption fine and penalty upon the applicant. There are a catena of judgments which align with the view that the discretionary powers vested with the lower authorities under section 125(1) of the Customs Act, 1962 have to be exercised. The order of absolute confiscation of the gold jewelry in the impugned Order in Appeal therefore needs to be modified, the confiscated gold jewelry is liable to be allowed for re-export on payment of redemption fine.

9. Taking into consideration the foregoing discussion, Government modifies the order of absolute confiscation of the impugned gold. Government allows redemption of the confiscated gold chain for re-export in lieu of redemption fine. The confiscation of the gold jewelry totally weighing 220 gms, valued at Rs. 6,86,180/- (Rupees Six lacs, Eighty six thousand one hundred and sixty nine) is ordered to be redeemed for re-export on payment of redemption fine of Rs.2,00,000/- (Rupees Two lacs) under section 125 of the

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Customs Act, 1962. Government also observes that facts of the case justify reduction in penalty imposed. The penalty imposed on the Applicant is therefore reduced from Rs. 68,000/- (Rupees Sixty eight thousand) to Rs.50,000/- (Rupees Fifty thousand) under section 112(a) of the Customs Act,1962.

10. The impugned Order in Appeal 718/2014 dated 30.04.2014 is modified as detailed above. Revision Application is partly allowed.

11. So, ordered.

Ashok Kumar Mehta
28.2.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & ex-officio
Additional Secretary to Government of India

ORDER No. 80/2018-CUS (SZ) /ASRA/MUMBAI DATED 28.02.2018

To,

Shri. Shivayogarajan Nishanthan
C/o S. Palanikumar, Advocate,
No. 10, Sunkurama Chetty Street,
Opp High court, 2nd Floor,
Chennai 600 001.

True Copy Attested

S. R. Hirulkar
5.3.18

एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of Customs, Anna International Airport, Chennai.
2. The Commissioner of Customs (Appeals), Custom House, Rajaji Salai Chennai.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare Copy.



